

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MICHELLE DOTTS,

Civ. No. 06-6219-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

Plaintiff filed this action for review of the decision of the Commissioner denying her application for a period of disability and disability insurance benefits. Plaintiff requests remand for a new hearing.

Discussion

Plaintiff argues that the administrative law judge (ALJ) erred by failing to consider all of her impairments and symptoms, by failing to consider chiropractor records, by improperly rejecting her testimony and allegations, and by finding that she can perform her past work as a child care provider.

The ALJ failed to address the chiropractor records. This error is not necessarily harmless. The records evince plaintiff's complaints of severe headaches. (Tr. 167-177). Though they predate plaintiff's alleged onset date, the records bear upon the weight to accord (1) plaintiff's complaints that she is bedridden by headaches and unable to work due to pain and fatigue, and (2) treating physician Tatarski's opinion that plaintiff continues to suffer from frequent headaches and other symptoms, and that plaintiff will probably miss work more than two days per month and require more frequent and longer breaks than found in a traditional eight-hour work day.¹

Neither the ALJ nor the Commissioner point to evidence supporting the ALJ's conclusion that plaintiff has 80% of the energy of a normal person her age. Though he purported to credit the opinions of Dr. Hook and state agency physicians, the ALJ did not include their findings that plaintiff is limited to occasional balancing, stopping and crouching in his assessment of plaintiff's residual functional capacity (RFC).

Plaintiff complains that the ALJ did not consider asthma (mild intermittent), IBS, BPPV, mixed incontinence-stress and overactive bladder and cerebral palsy-right leg conditions. She contends these impairments are most likely to effect the work

¹The ALJ found plaintiff not entirely credible and rejected treating Dr. Tatarski's opinion in favor of the opinion of examining physician Dr. Hook.

activities of breathing, balance, and a need for additional unscheduled breaks. For the reasons discussed above, the ALJ must reconsider plaintiff's abilities to balance and withstand the rigors of a full-time work schedule. However, plaintiff does not point to evidence that these impairments result in any particular functional limitations.

Conclusion

Based on the foregoing, the decision of the Commissioner is reversed. This matter is remanded to the Commissioner for remand to the ALJ for a new hearing and decision, consistent with this order.

IT IS SO ORDERED.

DATED this 6th day of July, 2007.

s/ Michael R. Hogan
United States District Judge